

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Implementation of Section 224 of the Act)	WC Docket No. 07-245
)	
A National Broadband Plan for Our Future)	GN Docket No. 09-51
)	
)	
)	
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**OPPOSITION OF THE DAS FORUM (A MEMBERSHIP SECTION OF
PCIA—THE WIRELESS INFRASTRUCTURE ASSOCIATION)
TO THE PETITION FOR RECONSIDERATION OF THE COALITION OF
CONCERNED UTILITIES AND PETITION FOR RECONSIDERATION AND
REQUEST FOR CLARIFICATION OF THE FLORIDA INVESTOR-OWNED
ELECTRIC UTILITIES**

I. INTRODUCTION

The DAS Forum, a membership section of PCIA—The Wireless Infrastructure Association (“DAS Forum”)¹ respectfully submits the following opposition in response to the Petitions for Reconsideration (“*Petitions*”) of the Federal Communications Commission’s (“FCC” or “Commission”) *Order*² in the above-captioned dockets filed by the Coalition of

¹ The DAS Forum is a broad-based non-profit organization, dedicated to the development of the DAS component of the nation’s wireless network. It is the only national network of leaders focused exclusively on shaping the future of DAS as a viable complement to traditional macro cell sites and a solution to the deployment of wireless services in challenging environments. PCIA is the national trade association representing the wireless telecommunications infrastructure industry. PCIA seeks to facilitate the rapid and efficient deployment of widespread dependable communications networks across the country, consistent with the mandate of the Telecommunications Act of 1996.

² *In re* Implementation of Section 224 of the Act; A National Broadband Plan for Our Future, WC Docket No. 07-245, GN Docket No. 09-51, *Order and Further Notice of Proposed Rulemaking*, FCC-10-84 (May 20, 2010) (“*Order and FNPRM*”).

Concerned Utilities (“Coalition”)³ and the Florida Investor-Owned Electric Utilities (“Florida IOUs”).⁴ For the reasons below, we urge the Commission to deny the *Petitions*.

In the *Order*, the FCC implemented the recommendations of the NATIONAL BROADBAND PLAN to “revis[e] the Commission’s pole attachment rules to lower the costs of telecommunications, cable, and broadband deployment and promote competition.”⁵ As a first step, the Commission clarified “that the statutory nondiscriminatory access requirement allows communications providers to use space- and cost-saving attachment techniques where practical and consistent with pole owners’ use of those techniques.”⁶ This clarification moves closer toward ensuring timely access to existing infrastructure for all telecommunications and cable attachers at reasonable rates. However, the *Petitions* seek reconsideration and clarification in ways that would strip the *Order* of any effect in practice and should be denied.

II. THE COMMISSION SHOULD DENY THE *PETITIONS* AND REAFFIRM THE RIGHTS OF ALL ATTACHERS TO USE THE SAME ATTACHMENT TECHNIQUES THE UTILITY POLE OWNER USES

The *Petitions* seek similar goals: clarification or reconsideration of the rule requiring utility pole owners to allow attachers to use the same attachment techniques that the pole owner uses or permits other attachers to use. Both *Petitions* seek clarification that a utility pole owner

³ See Petition for Reconsideration of the Coalition of Concerned Utilities: Allegheny Power, Baltimore Gas and Electric Co., Dayton Power and Light Co., FirstEnergy Corp., National Grid, NSTAR, PPL Electric Utilities; South Dakota Electric Utilities, Wisconsin Public Service Co.; WC Docket 07-245, GN Docket 09-51 (filed Sept. 2, 2010) (“*Coalition Petition*”).

⁴ See Petition for Reconsideration and Request for Clarification of the Florida Investor-Owned Electric Utilities: Florida Power & Light Co., Tampa Electric Co., Progress Energy Florida, Inc., Gulf Power Co., Florida Public Utilities Co., WC Docket 07-245, GN Docket 09-51 (filed Sept. 2, 2010) (“*Florida IOU Petition*”).

⁵ *Order and FNPRM* ¶ 1.

⁶ *Id.* ¶ 7.

only has to allow telecommunications and cable attachers to use cost- and space-saving techniques that the utility pole owner uses in the communications space or permits other attachers to use in the communications space.⁷ The *Petitions* provide no persuasive evidence for why the Commission should reconsider its clarification that utility pole owners must allow all telecommunications and cable attachers to use the same attachment techniques as the utility pole owner and should be denied.

There is no indication the FCC intended to limit the *Order* to those techniques that the utility or other attacher uses in the communications space. The FCC is clear that once a utility pole owner uses or permits an attachment technique, it triggers a presumption with respect to other attachers using the same technique.⁸ If the utility pole owner is utilizing a given attachment technique, it must have determined that the technique is compatible with its operational goals and does not threaten safety or reliability. If an attachment technique is safe or reliable enough for the utility pole owner, it should also be presumably safe or reliable enough for the utility pole owner. The *Order* retains the statutory right of the pole owner to rebut this presumption.

Both *Petitions* raise concerns about the use of utility attachment techniques in the supply space and the safety, engineering, and reliability concerns that may arise when these techniques are used in the communications space.⁹ These concerns, however, were considered and addressed in the *Order* by reference to the statutory rights of utility pole owners to deny attachments for reasons of safety, reliability, and engineering purposes.¹⁰ The *Order* explicitly

⁷ *Coalition Petition* at 2-4; *Florida IOU Petition* at 9-13.

⁸ *Order and FNPRM* ¶ 11.

⁹ *Florida IOU Petition* at 5-8.

¹⁰ *See Order and FNPRM* ¶ 11.

states “once the presumption that such techniques are appropriate has been triggered, a utility may rebut it with respect to any single pole or class of poles for reasons of safety, reliability and generally applicable engineering purposes.”¹¹

The *Petitions* fail to establish any legal or policy grounds with respect to the use of attachment techniques used by the pole owner or other attachers to justify reconsideration or clarification of the *Order*. Further, the *Petitions* seek to reverse the Commission’s first step forward toward comprehensive rules ensuring timely access to utility poles at reasonable rates for all attachers. The Commission should deny the *Petitions* and reaffirm the right of attachers to use the same attachment techniques that a utility pole owner or other attacher uses on any portion of the pole.

IV. THE COMMISSION SHOULD DENY THE COALITION’S REQUESTS FOR RECONSIDERATION WITH RESPECT TO THE ABILITY TO CHANGE POLE ATTACHMENT TECHNIQUES AND THE IMPACT OF THE *ORDER* ON JOINTLY-OWNED POLES

In addition to seeking reconsideration of the FCC’s clarification regarding the use of pole attachment techniques, the Coalition also seeks reconsideration or clarification of two related issues on which the FCC has yet to issue final rules. First, the Coalition seeks a rule that “a pole owner should be free to impose new boxing and extension arm requirements regardless of what it may have allowed in the past.”¹² Second, the Coalition seeks a rule that for jointly-owned poles, each owner can limit the use of boxing and bracketing on the jointly-owned pole.¹³

These are matters before the Commission in its *Further Notice of Proposed Rulemaking* in the above captioned dockets, and are therefore not ripe for reconsideration. Under the

¹¹ *Id.*; 47 U.S.C. § 224(f)(2).

¹² *Coalition Petition* at 2.

¹³ *Id.*

Commission's rules, a petition for reconsideration must seek reconsideration of a "final action in a proceeding."¹⁴ The Commission sought comment on the impact of the *Order* if a utility changes its attachment techniques over time, and on the impact of the *Order* on jointly-owned poles.¹⁵

Specifically, in the *Further Notice of Proposed Rulemaking*, the FCC sought comment on the extent that "the nondiscrimination standard in the statute automatically address[es]" instances where a utility pole owner "prohibit[s] boxing and bracketing for both itself and other attachers going forward" if it allowed the techniques in the past.¹⁶ Additionally, the FCC seeks comment on "how standards should apply when a pole is jointly used or owned."¹⁷ Because these are in substance the two issues on which the Coalition seeks reconsideration and clarification, they are not the subject of a final action, and are not ripe for reconsideration.

III. CONCLUSION

For the foregoing reasons, PCIA urges Commission to deny the *Petitions* and reaffirm the right of all telecommunications and cable attachers to use the same attachment techniques used or permitted to be used by a utility pole owner, without respect to the space on the pole where the attachment technique is used.

¹⁴ 47 C.F.R. § 1.429(a).

¹⁵ *Order and FNPRM* ¶ 74.

¹⁶ *Id.*

¹⁷ *Id.*

Respectfully submitted,

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